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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 671/2015

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	D.I.S. (represented by counsel, Jano Christopher Ugyved)
Alleged victim:	The complainant
State party:	Hungary
Date of complaint:	31 March 2015 (initial submission)
Date of present decision:	8 December 2015
Subject matter:	Extradition to the United States of America.
Procedural issues:	Admissibility — examination by another procedure of international investigation or settlement; manifestly ill-founded; non-exhaustion of domestic remedies; interim measures
Substantive issues:	Non-refoulement; torture; cruel, inhuman or degrading treatment or punishment
Articles of the Convention:	2, 3, 11, 16 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 671/2015*, **

Submitted by:	D.I.S. (represented by counsel, Jano Christopher Ugyved)
Alleged victim:	The complainant
State party:	Hungary
Date of complaint:	31 March 2015 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 November 2015,

Having concluded its consideration of complaint No. 671/2015, submitted to it by D.I.S. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is D.I.S., Canadian national of Jewish faith, born in 1976. At the moment of the initial submission, he was under extradition detention in Budapest awaiting extradition to the United States of America. He claims that his extradition would amount to a violation by Hungary of articles 2, 3, 11 and 16 of the Convention. He is represented by counsel, Jano Christopher Ugyved.

1.2 On 7 April 2015, in application of rule 114 (1) of its rules of procedure, the Committee requested the State party to refrain from extraditing the complainant to the United States while the communication was being considered by the Committee. The request was reiterated on 27 April and on 3 June 2015.[1]

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* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Abdoulaye Gaye, Claudio Grossman, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

** The text of an individual opinion (dissenting) of Committee member Alessio Bruni is appended to the present decision.

[1] The State party submitted and reiterated its request to lift the interim measures, respectively, on 15, 17, 21 and 23 April 2015.

1.3 On 3 June 2015, in accordance with rule 115 (3) of its rules of procedure, the Committee decided to examine the admissibility of the complaint together with its merits.

Facts as presented by the complainant

2.1 The complainant is a legal resident of Hungary and has a Hungarian wife and a two-year-old child. He owns property and shares in several companies. On 21 March 2012, an international arrest warrant was issued by the United States against the complainant for the criminal offences of fraud, money laundering, forgery of private documents, obstruction of proceedings and making false statements to official authorities.

2.2 The complainant was arrested on 15 February 2014 in Budapest and placed under extraordinary detention until 17 February 2014, when the Metropolitan Court of Budapest ordered his "temporary extradition arrest"; an ordinary detention of extradition (extradition detention) was ordered 59 days later.

2.3 On 20 February 2014, the complainant filed an application for asylum to the Office of Immigration and Nationality of Hungary, requesting that the rule of non-refoulement prevails. The grounds of the request were that, in the event of his extradition to the United States and imprisonment there, he would be subjected to rape, other types of sexual assaults and physical harm by inmates occurring in correlation with his Jewish faith. In addition, the complainant alleged that, during his earlier imprisonment in six different penitentiary institutions from 2006 to 2010, he was raped 6 times, subjected to other sexual abuse at least 10 times and assaulted 25 times. The prison staff or other competent authorities did not take any measures to protect him, except to place him in a small room without windows for 13 months. As a result of those actions, the complainant suffers from post-traumatic stress disorder.[2]

2.4 On 30 May 2014, his request for asylum and non-refoulement was rejected by the Office of Immigration and Nationality, on the basis of information provided by the United States Embassy in Budapest. According to that information, every assault against him had been duly investigated and the assaults in question had been found not to relate to the racist group "Aryan brotherhood" operating in prisons, since, while he was in the United States prisons, the complainant had not declared himself Jewish, but claimed to be Catholic.

2.5 The complainant challenged that decision by appealing to the "competent Court of Administration and Labour Affairs", claiming that the Office of Immigration and Nationality had based its decision unilaterally on the information provided by the United States Embassy and had not taken into consideration the documents he had provided. The Court rejected the complainant's appeal and upheld the decision of the Office of Immigration and Nationality.

2.6 Within the extradition proceedings (see para 2.2 above), on 11 August 2014, the Metropolitan Court decided that the legal requirements for extradition had been met for the offences of fraud, money laundering and forgery of private documents, but not in respect of giving false evidence. The complainant notes that he claimed that the rule of speciality would be violated by the fact that, according to United States practice, in the sentencing

[2] The complainant provided as evidence several psychiatrists' reports, the most recent one dated 2 April 2015; statements of Rabbi David Goldstein, a prison chaplain in the state of Texas, who provided religious guidance and counselling to him; a statement by Douglas McNabb, an attorney at law, who confirmed that the complainant had alleged on several occasions that he had been sexually assaulted and that his complaints had gone "unchallenged" (on the basis of the review of the United States court docket sheet); and copies of several complaints to the judicial authorities in several states concerning threats and sexual assaults.

process, he would be punished for offences for which the extradition had not been approved by Hungarian courts.

2.7 On 21 August 2014, the Court of Appeal upheld the decision of the Metropolitan Court. In its reasoning, the Court of Appeal considered "the risk of systematic infringement of speciality on behalf of the United States as a question beyond the scope of the court procedure".

2.8 On 22 September 2014, the complainant submitted a second request for asylum, attaching a forensic psychiatric report confirming that his post-traumatic stress disorder had originated from the assaults he had suffered in United States prisons.

2.9 On 20 October 2014, the Office of Immigration and Nationality once again rejected his request. The complainant maintains that he has exhausted domestic remedies.

2.10 In October 2014, the complainant reported that he had twice received death threats in letters addressed to him from the United States. On 29 October 2014, he submitted a complaint to the Hungarian Police regarding the above threats.

The complaint

3.1 The complainant submits that his extradition to the United States would amount to a violation by the State party of articles 2, 3, 11 and 16 of the Convention.

3.2 The complainant maintains that, if extradited to the United States, there would be an imminent risk that he would be subjected to inhumane and degrading treatment in United States prisons. He would again be subjected to rape, other types of sexual assaults and physical harm by inmates occurring in correlation with his Jewish faith and religion, and the United States authorities would not provide him with sufficient protection.[3]

3.3 The complainant suffers from attested post-traumatic stress disorder and alleges that he had received insufficient medication and psychological treatment in United States prisons.

3.4 Furthermore, the complainant asserts that he spent 13 months in solitary confinement. He refers to the statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that solitary confinement in excess of 15 days is considered to be cruel and inhumane.[4] The complainant claims that United States guidelines allow solitary confinement to last for up to 18 months; however, in reality, it exceeds that limit.[5]

3.5 Finally, the complainant alleges that, if extradited to the United States, the concept of speciality (dual criminality) and his right to a fair trial would be violated. According to United States criminal proceedings practice, the evidence regarding the non-extraditable offences would not be examined, since those offences would not be part of the formal charges, but would be included in the "pre-sentence investigation report" as "relevant conduct", which is not subject to any evidence process and would have a compounding effect on the complainant's sentence.

[3] The complainant has attached a number of copies of his complaints to the United States authorities wherein he also mentions that he was sexually assaulted. Furthermore, he refers to several newspaper articles about inhumane conditions in United States prisons and about neo-Nazi organizations within those prisons.

[4] See the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268, para 76).

[5] The complainant does not provide information as to what guidelines he is referring to.

State party's observations on admissibility

4.1 On 15 April 2015, the State party challenged the admissibility of the complaint, noting that the complainant has submitted an application with the European Court of Human Rights also requesting the order of an interim measure under article 39 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) not to be extradited to the United States.[6] It submits a copy of the above-mentioned application/request for interim measures to the European Court, dated 6 November 2014, noting that it contains the same facts almost word-for-word and refers to the same substantive rights. The State party maintains that the procedure before the European Court is related to the "same matter" as prescribed by article 22 (5) (a) of the Convention, considering that the application was submitted by the same complainant, was based on the same facts and related to the same substantive rights as those invoked in the present communication. The State party refers to the Committee's previous decision,[7] in which it ruled that, in the even where an application has been declared inadmissible before the European Court, it shall be regarded as a complaint that has been examined under another procedure of international investigation or settlement for the purposes of article 22 (5) (a).

4.2 The State party submits that the communication should be considered inadmissible under article 22 (2) of the Convention and rule 113 (a) and (b) of the Committee's rules of procedure for being manifestly unfounded as regards the alleged risk of torture and for being incompatible with the provisions of the Convention as regards the alleged infringement of fair trial rights.

4.3 On 30 April 2015, the State party reiterated its observations on the admissibility and informed the Committee that the extradition of the complainant to the United States had been suspended in accordance with the Committee's request for interim measures; however, given the nature of the case, it urged the Committee to issue its decision in the near future.

Complainant's comments on the State party's observations on admissibility

5.1 On 20, 22, 23 and 29 April 2015, the complainant challenged the State party's argument that an application had been submitted to the European Court of Human Rights on the "same matter". He submits that the basis of the application to the European Court was the fact that he risked not having a fair trial since the United States uses a so-called pre-sentence report in judicial proceedings, and that that in itself would violate the doctrine of speciality, which is a fundamental aspect of the extradition treaty between the United States and Hungary. His mistreatment was mentioned as a background circumstance, but the essence of the application related to the fairness of his trial as being in contradiction with article 6.3 (d) of the European Convention on Human Rights. The complainant

[6] The complainant's application to the European Court of Human Rights was registered under No. 71302/14. It concerned his pending extradition from Hungary to the United States, alleging that it would entail violations of articles 3, 6, 9 and 14 of the European Convention on Human Rights. He further requested the European Court to prevent his extradition by means of an interim measure. On 10 November 2014, after examining the request, the acting president of the Court's filtering section decided not to indicate to the Government of Hungary the interim measure sought. Subsequently, the European Court, sitting in a single-judge formation from 8 to 22 January 2015, decided to declare the application inadmissible because, in the light of all the material in its possession and insofar as the subject of the complaint were within its competence, the admissibility criteria set out in articles 34 and 35 of the Convention had not been met.

[7] See communication No. 247/2004, *A.A. v. Azerbaijan*, decision adopted on 25 November 2005.

submits that there are new facts since the application to the Court, notably that he has received "virulent death threats".

5.2 With regard to the State party's view that his complaint is manifestly unfounded as concerns the alleged risk of torture, the complainant objects to this statement as the State party provides no supporting evidence. He claims the State party has not investigated thoroughly his claims.[8] The State party's authorities contacted the United States Embassy in Budapest, which responded that all of the complainant's rights have been respected. Furthermore, he contends that he had provided documentation about his own experiences and the circumstances of foreigners and minorities in United States detention facilities. Notably, he claims to have been subjected to torture through pain, suffering, physical and mental abuse inflicted upon him by prison staff and other officials, as well as inmates. He submits that, despite his numerous letters to the United States Federal Bureau of Prisons about the ongoing torture, he was not given any remedy but was instead subjected to prolonged isolation. He claims that he filed court documents stating he wanted to bring criminal charges against the guards, but that they were never answered. Despite his petitions to the judge and prosecutor in his case, nothing was done to assist him. The complainant also asserts that long-term solitary confinement and lack of staff to provide mental health services are a practice in the United States prisons' system, referring to the Committee's concluding observations on the combined third to fifth periodic reports of the United States (CAT/C/USA/CO/3-5).

5.3 Furthermore, the complainant submits that he received anti-Semitic death threats from the United States on two occasions in November 2014 aimed at himself and his family, which were not investigated by the State party for a period of several months. They were sent to him by post with his wife falsely marked as the sender. The death threats were addressed to him personally, in English and of an anti-Semitic nature, since they made direct references to his Jewish faith. Furthermore, the second letter was posted from the address of a Jewish cemetery in the state to which he is requested to be extradited. The complainant submits that he presented this evidence on both occasions to the prison guards and subsequently filed criminal charges with the State party's police in the fall of 2014. He was called upon to give witness testimony by the police only six months later, on 3 April 2015. Furthermore, he has petitioned the State party to request mutual legal assistance from the United States in order to investigate the death threats, but his formal request was rejected. On 17 April 2015, his complaint was dismissed by the Budapest police, on the grounds that there was no realistic possibility of establishing the perpetrator of the crime. He was informed that the Budapest police has not been contacted by the competent authorities of the United States regarding the matter. On 5 May 2015, he lodged a complaint against the decision of the police.

5.4 He maintains that he has provided expert forensic psychiatric evidence that his condition of post-traumatic stress disorder is a direct consequence of the mistreatment and torture that he was submitted to while in United States custody.

5.5 On 15 April 2015, the Metropolitan Court extended the complainant's detention, taking into consideration the Committee's request for interim measures of protection.

[8] The complainant refers to a correspondence dated 14 April 2015 from the head of the International Criminal Law Department at the Ministry of Justice to the Metropolitan Court of Budapest, stating that, in its view, "the plaintiff is abusing the authority of the Committee since the concerns stated on his part have already been examined by the Hungarian authorities, and the United States authorities have provided sufficient guarantees to ensure that the plaintiff will not be subjected to torture and other humiliating treatment, and he can also freely practice his religious beliefs while incarcerated, furthermore his mental condition will be treated adequately".

5.6 The complainant further complains that his rights under article 16 of the Convention had been violated by the State party.

State party's further observations on admissibility and on the merits

6.1 On 3 August 2015, the State party submitted its observations on the merits of the complaint and reiterated the information provided in its observations on admissibility, notably that substantially the same application had been submitted by the same complainant to the European Court of Human Rights, in which he also requested the order of an interim measure not to be extradited to the United States (see para 4.1 above). The State party noted the decision of the Committee not to consider the issue of admissibility separately from the merits, presumably on the basis that the decision delivered by the European Court of Human Rights is of a procedural nature and not a decision on the merits. The State party does not contest that a mere procedural decision by another international body may not prevent a complaint from being declared admissible by the Committee. Nevertheless, it argues that a decision on the issue of admissibility by the Court in no way suggests that the presented case has not been examined on the merits. The State party maintains that the Court may declare an application inadmissible on the basis of it being manifestly ill-founded even in cases where a complaint is compatible with the European Convention on Human Rights and all formal/procedural criteria have been met. Such a decision necessarily presupposes an examination on the merits of the case even according to the Court's own interpretation. Given that none of the documents issued by the Registrar of the Court indicates the specific reason for the inadmissibility decision, the State party observes that it cannot be excluded that it was due to a decision on the merits (i.e. that the complaint was manifestly ill-founded). The State party refers to the jurisprudence of the Committee,[9] in which it declared the complaint inadmissible on the basis of an inadmissibility decision of the Court. The State party concludes that the complaint should be dismissed under article 22 (5) (a) of the Convention.

6.2 Regarding the allegations of past torture, the State party argues that the complainant failed to present a prima facie case since the application lacks the minimum of substantiation and is manifestly unfounded.

6.3 As concerns the complaint under article 16 of the Convention, the State party challenges the applicability of the invoked provision. It refers to the Committee's general comment No. 1 (1997) on the implementation of article 3, claiming that the obligation of a State party to refrain from returning a person to another State is only applicable if the person is in danger of being subjected to torture as defined in article 1 of the Convention. It notes that article 3 does not contain a reference to "other acts of cruel, inhuman or degrading treatment or punishment", as contained in article 16, nor does article 16 contain reference to article 3.

6.4 As to the allegations related to the potential infringements of fair trial rights in the United States, the State party submits that such a complaint falls outside the scope of the Convention and, accordingly, should be declared inadmissible as incompatible with the provisions of the Convention.

6.5 The State party further maintains that the Office of Immigration and Nationality and the judicial appropriate bodies found that the complainant would not be personally at risk of being subjected to torture once returned to the United States since the recipient State meets the criteria of a safe third country. The State party asserts that its authorities have examined the country profile of the United States focusing in particular on prison conditions, the

[9] See in particular *A.A. v. Azerbaijan* (note 7 above).

enforcement of defence rights and the execution of ratified human rights conventions. The Office of Immigration and Nationality has requested the assistance of the United States Attorney's Office, whose response revealed various inconsistences and false statements in the complainant's submission.[10] The State party notes that the burden of proof lies with the complainant to substantiate his claims. It states that it is aware of reports of brutality and use of excessive use of force by United States law enforcement personnel. However, this cannot be decisive on its own.

6.6 The State party refers to the Committee's jurisprudence,[11] arguing that the question at stake is whether the complainant risks torture upon return to the United States at present. With regard to the complainant's allegations related to torture experienced in the past and subsequent post-traumatic stress disorder, the State party maintains that the expert opinion filed by the complainant is "not suitable for determining the real cause of the disease considering that it is only based on the assertions of the patient". It further argues that, even accepting the alleged causal link between the complainant's former imprisonment and his disorder, the execution of imprisonment in general may cause in itself depression, panic seizure or other trauma/disorder. Accordingly, the State party notes that the disorder, even if developed under prison conditions, does not presuppose the experience of torture.

6.7 The State party submits that, at the request of its Ministry of Justice, the United States Department of Justice gave its assurance that, should the complainant be incarcerated, the United States Attorney's Office will assist him by conveying any valid concerns demonstrated to the United States Federal Bureau of Prisons.

6.8 The State party notes, as to the alleged past ill-treatment, that the prison file of the complainant, contrary to his assertions, indicates that he purportedly made false allegations while in prison and his transfers were largely a result of his own conduct. Additionally, according to information given by the United States Attorney's Office, there is no record either of any claim that his Jewish faith had anything to do with the alleged attacks or of any allegations of anti-Semitism or comments related to his faith; on the contrary, the complainant repeatedly reported to prison officials that he was Catholic.

6.9 As to the letters threatening the complainant's life, the State party contests their evidentiary value as the sender and the place of departure cannot be identified. Nevertheless, it argues that, even if the letters would be admitted as documents having probable value, the risk of being subjected to assault by private individuals falls outside the scope of article 3 of the Convention.

6.10 Concerning the allegations of solitary confinement, the State party submits that the claim is based on mere speculations as to what may occur if the complainant were convicted and sentenced to imprisonment and cannot amount to prima facie evidence that the facts asserted will in fact occur. It also argues that, even if substantiated, solitary confinement does not in itself constitute torture and must still meet the definition of article 1 of the Convention. The State party has no reason to believe that solitary confinement is used generally in the United States or would be used in the complainant's case as there is no evidence to suggest that "solitary confinement" is used in United States prisons in any way other than incidentally to lawful sanctions.

6.11 The State party submits that the United States Department of Justice acknowledged that the extradition is only for the charges of fraud, money laundering and forgery of private documents (indictment counts 1-3) and not for the charge of giving false evidence. The United States Attorney's Office twice gave its assurance that the United States

[10] The State party does not elaborate further.

[11] Communication No. 220/2002, *M.M.K. v. Sweden*, Decision adopted on 2 May 2005, para. 8.5.

"recognizes the limitations imposed by the rule of specialty provision in article 17 of the extradition treaty with Hungary and will not be seeking a conviction of the person concerned on the charges in counts 4 and 5". The State party submits that the United States authorities have "certified that the complainant will not be exposed to torture or any kind of ill-treatment" and provided the State party with a "legal assurance certifying the receipt of appropriate medical treatment should the complainant be imprisoned in the United States".[12]

6.12 The State party further submits that the extradition treaty between the Government of the United States of America and the Government of Hungary was signed on 1 December 1994 and promulgated by Act LXI of 1996. It points out that the extradition has been suspended on account of the interim measures ordered by the Committee and the complainant will be held in custody until 27 October 2015, in accordance with the final decision of the Appellate Court of Budapest.

6.13 The State party maintains that the detention of the complainant has the legitimate aim of enabling the State party to comply with its international obligations, namely, to surrender the person concerned to the United States. At the same time, the State party acknowledges that, despite the above-mentioned legitimate aim, no person shall be held in custody for an unlimited period of time.

6.14 The State party submits that, without prioritizing any of its obligations under international law that seem to collide in the present case, it will obey its obligations under the Convention and execute the decision of the Committee irrespective of its outcome should the Committee deliver its decision before the expiration of the deadline for the complainant's release, namely, 27 October 2015. However, if the Committee fails to reach a decision until the above-mentioned deadline, the State party will have no other choice but to extradite the complainant in compliance with the bilateral agreement. The State party states that it does not wish to compromise the extradition procedure by releasing the complainant despite the absence of a final decision of the Committee, or to secure the extradition procedure at the expense of breaching human rights norms and continuously keeping the complainant in detention for an unpredictable period of time.

6.15 For the reasons detailed above, the State party considers that the communication is without merit and the complainant's removal to the United States would not constitute a breach of article 3 of the Convention.

The complainant's further comments

7.1 On 23 September 2015, the complainant submits that the State party has given an ultimatum to the Committee by stating that, if the Committee does not issue its decision by 27 October 2015, it will disregard the Committee's request for interim measures and extradite the complainant to the United States. He notes that an international convention on human rights and specifically against torture constitutes *jus cogens* in international law,

[12] The State party presents copies of the assurances, dated 9 October 2014 and 25 February and 5 March 2015, which (a) state that, in the event of his imprisonment, the location and conditions of the complainant's incarceration will rest with the United States Bureau of Prisons; and (b) provide information about the functions of the above Bureau. The assurances also state that, should the complainant have any concerns while incarcerated, he should communicate those issues directly to his prison and to the Bureau and that, if necessary, the United States Attorney's Office will assist by conveying any valid concerns that the complainant may demonstrate to the Bureau. They further state that the United States Attorney's Office will seek to ensure that the complainant serves his prison sentence with appropriate accommodations to protect his well-being and religious practices.

whereas a bilateral treaty between two States is of much lesser scope both in principle and pertinence.

7.2 On 28 September 2015, the complainant contested the State party's observations both on admissibility and the merits. He reiterated his argumentation concerning the admissibility of the complaint, pointing out again that his application to the European Court had been rejected on procedural grounds and that the United States authorities had not investigated his claims of torture and mistreatment in the United States prisons. He also reiterated that the police, the prosecution and the Ministry of Justice of the State party did not responded to his numerous requests to utilize the mutual legal assistance treaty in order to ask their United States counterparts for assistance in the investigation regarding the anti-Semitic death threats he had received by post from the United States.

7.3 The complainant submits that the combination of official court documents he filed in the United States and the death threats that the State party refused to investigate should justify a finding of a violation of article 3 of the Convention. He claims that he is a member of a visible minority, namely, a Chassidic Jew. He objects to the State party's submission that he had not substantiated the personal risk of being subject to torture and maintains that he was the victim on multiple occasions of gang rape, sodomy and oral rape. He notes that, as a victim of rape, he is in need of protection in order to prevent even a remote possible chance of re-victimization. Moreover, in a prison population dominated by white supremacists, the Aryan brotherhood and Muslim brotherhood, there is a high probability of him being re-victimized. The complainant claims that he was a victim of brutality by prison staff. He submits that, having being raped multiple times, he is scarred for life and has been diagnosed with post-traumatic stress disorder. He claims he will be deprived of his medication for treatment of panic attacks (Benzodiazepines) and that withdrawal from this can be fatal. He questions the assurances given by the Attorney's Office on behalf of the United States Federal Bureau of Prisons, which is independent and will contest the use of "non-formulary" drugs, even if ordered by a judge, and claims that the appeal proceedings can last between 6 and 12 months.

7.4 Furthermore, the complainant reiterates his claims of torture and having spent 13 months in solitary confinement, which he states constituted "revenge by extended isolation". He objects to the State party's position that solitary confinement is not a torture in itself. The complainant claims to be on a target list of the Aryan brotherhood and that sometimes prison staff are also members of that group. In summary, he concludes that his life would be in danger if he is extradited.

Additional submissions by the parties

8.1 On 19 October 2015, the State party informed the Committee that it had decided to execute the extradition of the complainant to the United States, arguing that its laws did not allow the extradition to be postponed further and, accordingly, the Committee's request dated 7 April 2015 for interim measures could not be complied with any longer. The State party reiterated its previous submissions. It assured the Committee that there were no grounds to believe that the complainant would face a risk of torture upon his extradition to the United States. Moreover, the State party pledged to monitor the complainant's situation on regular intervals and to file reports with the Committee on the complainant's well-being.

8.2 On 21 October 2015, the complainant submitted that the execution of his extradition has been approved by the State party and was therefore imminent.

8.3 On 26 October 2015, the State party further submitted that the complainant had been extradited on 23 October 2015. It also noted that the United States authorities reaffirmed their guarantees not to expose the complainant to any treatment contrary to article 3 of the Convention.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedures

9.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect the interim measure requested by the Committee, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.[13]

9.2 The Committee takes note of the State party's argument that the maximum delay to keep the complainant in extradition detention expired on 27 October 2015; that, under domestic law, on that date the complainant should either have been released or extradited; that release may have compromised the extradition procedure; and that, therefore, a decision was taken to extradite the complainant to the United States in accordance with the existing mutual assistance treaty. The Committee recalls that the non-refoulement principle codified in article 3 of the Convention is absolute.[14] The Committee refers to article 27 of the Vienna Convention on the Law of Treaties, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

9.3 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 7 April 2015 and reiterated on two occasions, the State party seriously failed in its obligations under article 22 of the Convention.

Consideration of admissibility

10.1 Before considering any claim submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

10.2 The Committee notes the State party's objection that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention since the same matter was already being examined by the European Court of Human Rights. The Committee also notes the complainant's allegations that his application had been "rejected on procedural grounds" and therefore not examined by the European Court since its inadmissibility decision only stated that the admissibility requirements set out in articles 34 and 35 of the Convention had not been met and that its limited reasoning did not allow the Committee to conclude that it considered the merits of the case. The Committee further notes the complainant's allegations that his application to the European Court had been based on article 6.3 (d) of the European Convention on Human Rights, that his mistreatments violating article 3 of the European Convention had been mentioned in his application as a background circumstance and that, therefore, the application was "different in nature".

[13] See communications No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision adopted on 1 June 2012, paras. 10.1 and 10.2; and No. 554/2013, *X. v. Kazakhstan*, decision adopted on 3 August 2015, para. 10.1.

[14] See *Abdussamatov et al. v. Kazakhstan*, para. 13.7; *X. v. Kazakhstan*, para. 10.3; and communication No. 39/1996, *Paez v. Sweden*, decision adopted on 28 April 1996, para. 14.5 .

10.3 The Committee recalls[15] its consistent jurisprudence that it shall not consider any complaint from an individual under article 22 (5) (a) of the Convention, unless it has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee considers that a complaint has been and is being examined by another procedure of international investigation or settlement if the examination by the procedure relates/related to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights.[16]

10.4 The Committee observes that the present complaint raises claims under article 3 of the Convention mainly in relation to the alleged risk of torture to which the complainant would be subjected if removed to the United States. It further observes that, in his comments concerning the State party's observations as to the admissibility, the complainant confirmed that he had also applied to the European Court of Human Rights and had also requested that his deportation to the United States be suspended. Accordingly, in the light of the information contained in the case file, the Committee concludes that complainant's application submitted to the European Court on 6 November 2014 concerned the same person, was based on the same facts and related to the same substantive rights as those invoked in the present complaint. The Committee therefore considers that the complainant's application to the European Court was already being examined by that international procedure in the sense of article 22 (5) (a) of the Convention and, accordingly, concludes that the present communication is inadmissible in accordance with article 22 (5) (a) of the Convention.

11. Regarding the matter of lack of compliance with the Committee's request for interim measures, acting under article 22 (7) of the Convention, the Committee decides that the facts before it constitute a breach by the State party of article 22 of the Convention.

12. The State party is under the obligation to take steps to prevent similar violations in the future.

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[15] See, for example, communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, para. 6.1, and No. 642/2014, *M.T. v. Sweden*, decision adopted on 7 August 2015, para. 8.3.

[16] See for example, *A.A. v. Azerbaijan* (note 7 above), paras. 6.8; and communications No. 479/2011, *E.E. v. the Russian Federation*, inadmissibility decision adopted on 23 May 2013, para. 8.4; No 642/2014, *M.T. v. Sweden*, inadmissibility decision adopted on 7 August 2015, para. 8.3 and No. 643/2014, *U v. Sweden*, inadmissibility decision adopted on 23 November 2015, para. 6.4.

Appendix

Individual dissenting opinion of Committee member Alessio Bruni

1. The following sentence at the end of paragraph 9.2 of the Committee's decision on communication No. 671/2015 should be deleted: "The Committee refers to article 27 of the Vienna Convention on the Law of Treaties, according to which a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

2. The reference is wrong. The State party has invoked its obligations under an extradition treaty, not the provisions of its internal law.

3. In paragraph 9.3 of the decision, the words "the State party seriously failed in its obligations under article 22 of the Convention" should be replaced with the words "the State party seriously failed in its expected cooperation in good faith with the Committee".

4. In paragraph 11 of the decision, the words "acting under article 22 (7) of the Convention" should be deleted; and the words "a breach by the State party of article 22 of the Convention" should be replaced with the words "an evident lack of cooperation by the State party with the Committee and a serious obstacle to the Committee's deliberation", without reference to article 22 of the Convention.

5. Interim measures are contained in rule 114 of the rules of procedure of the Committee, which have not been subscribed to by the State party and are not contained in article 22 of the Convention, which, on the contrary, has been subscribed to by the State party. The breach, therefore, concerns that rule and not article 22 of the Convention.

6. Interim measures are legally binding in those treaties and protocols that provide for them, and are freely adhered to by States. Treaties, such as the Convention against Torture, which do not contain such provisions, should be amended in accordance with their amending mechanism in order to include the notion of legally binding interim measures.